include the happening of a contingency and that, as there was in this case no notice of refusal of performance, the claim was not barred by limitation.

TRIAL OF ACTION.

M. S. Mahendran, for the Plaintiff.

J. A. Thivy, for Defendants Nos. 1 and 2.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this case the Plaintiff as assignee seeks for specific performance of a contract for the sale of land. The only question is whether the suit is barred by limitation. The appropriate article here is No. 92 for which time runs from "the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused."

In the present case the contract was to be performed upon the happening of a contingency, viz "when the title to the land has been obtained." This contingency happened in 1918. There was no notice of refusal outside a period of 3 years. I cannot regard the wording of the article as very fortunate particularly when it is compared with that of article 47. Is the word "date" limited in meaning to a specified day or does it include the happening of a contingency?

In certain Indian cases attempts have been made to bring cases into the first half of the provision on the principle of *"ad certum est quod certum reddi potest",* but although the Courts have not uniformly rejected the contention I have not been able to find a case where it has been applied. In my opinion in construing a Statute of Limitation whoever raises such a plea must show that the case falls within one or other of the articles. It certainly seems unsatisfactory that a claim for specific performance should survive where a claim for damages would be barred but that must be taken to have been the intention of the legislature.

Judgment for Plaintiff and costs.

Judgment accordingly.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

November 28, 1938.

LAI TIN - - - - Appellant

v.

PUBLIC PROSECUTOR - - Respondent.

(PERAK MAGISTRATE'S CRIMINAL APPEAL No. 86 of 1938).

Penal Code, S. 304 A.—causing death by a rash act—degree of negligence.

The degree of negligence required to support a conviction under Section 304A of the Penal Code is not the same as, and in no way comparable to, that required to support a conviction for manslaughter under English Law. Where the facts of a case disclose a substantial and serious degree of negligence that would be sufficient to support a conviction under the section quoted above.

MAGISTRATE'S CRIMINAL APPEAL.

The Appellant was charged under Section 304A of the Penal Code and convicted and fined $200-00.

The material portion of the Magistrate's Grounds of Judgment is as follows:—

> "Although there is a fair amount of authority as to what constitutes manslaughter by negligence in English Law there is no good authority that I can find which gives one any indication of the degree of negligence required to justify a conviction under Section 304A. I will say at once that I do not consider the accused's negligence here sufficient to justify a verdict of manslaughter according to English law. I think it approaches close to, but still falls short of, what is there required. I do think though that it falls within the scope of Section 304A. I find no authority (other than that of text book writers) to tell me that the same degree of negligence is required. Obviously a high degree of negligence is needed but that exists here. The difference is simply that I do not think that this accused was guilty of what has been termed "wicked" negligence."

The appeal was on this ground:—

> "The Magistrate having found as a fact that there was no 'wicked' negligence was wrong to convict the accused under Section 304A."

H. Y. Teh for Appellant refers to *Ratanlal,* on Law of Crimes, 14th Edition page 761, where it is stated that the object of Section 304A is to supply a provision for the punishment of what English law called manslaughter by negligence. He also refers to *Gour's* Penal Code, 4th Edition, page 1615. The degree of negligence is well defined in English law. He refers to the following cases:—

Rex vs. Finney, 12 Cox 625.

Rex vs. Noakes, 4 F & F 920.

Rex vs. Bateman, 19 Cr: App: Reports 8.

Rex vs. Doherty, 15 Cox: 306.

It is only necessary to refer to one Indian Case and that is the case of *Idu Bej* reported in 3 Allahabad 776.

He submits that all the authorities clearly show that to justify a conviction under Section 304A there must be wicked or gross negligence.

Brodie, Assistant legal adviser for the respondent:

To take a car out on the road with its brakes so maladjusted as to cause the car to swing violently

across the road whenever the brakes are applied with any force is an act of gross negligence for which, whatever standard of negligence is adopted as the proper one, the accused is punishable under the Penal Code.

He refers to *Empress vs. Bhutan,* 1894, 16 All. 472.

Cur. Adv. Vult.

Murray-Aynsley, J.—This appeal gives rise to an interesting point of law namely whether the degree of negligence required to support a conviction under Section 304A of the Penal Code is the same as that required to support a conviction for manslaughter under English Law. The text book writers and the Indian decisions seem to support the view that they do. But it appears to me to be dangerous to construe the Penal Code and similar Enactments by reference to similar provisions of English Law. Those responsible for the drafting of the Indian Penal Code deliberately departed from English Law in many important respects and I think one can only look at the Code as it stands and construe it as one would any other enactment. In English law there is for the purpose of the Criminal Law a double standard of negligence. In the judgment of Lord Atkin in *Andrews v. Director of Public Prosecutions* 1937 A.C. 576, it is held that negligence may be great enough to support a conviction for "driving without due care and attention", or for "driving recklessly or at a speed or in a manner which is dangerous to the public", but not great enough to support a conviction for manslaughter. That learned Lord says—"it is perfectly possible that a man may "drive at a speed or in a manner dangerous to the public and cause death and yet not be guilty of manslaughter". I do not think that is possible here. The section contains the words "rash" and "negligent". The latter word is one in common usage, both as a legal term and otherwise. I do not consider that there is any reason for giving it a special meaning in this case.

I would not go so far as to say that the degree of negligence necessary to support a civil action should be applied without reservation. A criminal charge and a civil action should be approached in a different spirit. But English Law has as I have said a double standard of negligence in criminal law, and I do not consider that Section 304A gives any basis for the suggestion that such a double standard should be applied here.

In the present case the learned Magistrate has held that the Appellant was guilty of negligence but not of such negligence as would be considered sufficient for conviction for manslaughter in England. In my opinion the facts of the case disclose a substantial and serious degree of negligence. Whether or no in the present case it would be sufficient for a conviction for manslaughter, it is in my opinion sufficient for a conviction under Section 304A, and the appeal must be dismissed.

Appeal Dismissed.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.

October 6, 1938.

PUBLIC PROSECUTOR v. LYE YEN KHOY.

(SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 75 of 1938)

Sanitary Boards Enactment (Cap. 137) s. 17—Interpretation & General Clauses Enactment, S. 13—Kuala Lumpur Sanitary Board By-laws Part I, By-laws Nos. 37, 40—cubicles not conforming to by-laws—notices requiring alterations to or demolition of—validity of by-laws.

On the first floor of House No. 85 Petaling Street Kuala Lumpur there were seven cubicles used as sleeping places without windows. None of the cubicles had a floor space of 120 square feet as required by By-law 37 of the Kuala Lumpur Sanitary Board By-laws Part I. Notices were served on the owner of the premises requiring him to make alterations to or to demolish such cubicles as did not conform with By-laws 37 and 40. On non-compliance with the notices the owner was charged with offences under Section 17 of the Sanitary Board Enactment but was acquitted by the Magistrate on the ground that the by-laws were **ultra vires.** The Public Prosecutor appealed.

Held, that the by-laws were only intended to apply to the erection of buildings and that if and so far as they were intended to apply to existing buildings they were **ultra vires.**

Municipal Commissioners v. Syed Abdulrahman bin Shaikh Alkaff & Others, 6 M. L. J. 183 referred to.

Hay, Deputy Legal Adviser, for the Appellant.

Hastings for the Respondent.

Cur. Adv. Vult.

Terrell, Ag. C. J.—The respondent in this case was charged as follows:—

"That you being the owner of a domestic building namely No. 85 Petaling Street within the K.L., S.B. area on or about 8.12.37 did fail to comply with the terms of a notice lawfully given to you by the Chairman of the S.B., K.L., under the provisions of By-law No. 45 of the K.L., S.B., By-laws Part I (Gaz: Not: No. 3797 of 24.8.35) on 8.9.37, requiring you within three months from the service thereof to make such alterations in the cubicles and partitions in the said building as should conform to By-laws 37 and 40, Part I of the above-said By-laws or alternatively to demolish all such cubicles as do not